Special Service Delivery, Inc. *and* Thomas Lew and Teamsters Local Union No. 486, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 7-CA-17818

January 7, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On October 19, 1981, Administrative Law Judge Robert T. Wallace issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Special Service Delivery, Inc., Highland, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge: Upon a charge filed by Thomas Lew, an individual, against Special Service Delivery, Inc. (herein Respondent), a complaint was issued on July 9, 1980, in which it is alleged that Respondent violated Section 8(a)(1) and (2) of the National Labor Relations Act, as amended, by according premature recognition to Teamsters Local Union No. 486, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein Local 486), as the exclusive bargaining representative of employees at its facility in Highland, Michigan. The case was heard before me in Detroit on February 25, 1981.

Upon the entire record, and after due consideration of the brief filed by Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Michigan corporation, is engaged in interstate and intrastate transportation of freight; and, as pertinent, it has a terminal and office in Highland, Michigan. Its annual gross revenues are in excess of $500,000, and it annually delivers within Michigan goods valued in excess of $50,000, which goods moved directly from points located outside the State of Michigan. It admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 486 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The facts are brief and virtually undisputed. On April 8, 1980, Respondent executed a collective-bargaining agreement with Local 486. The agreement was made effective on April 1, 1980, and was to continue for 3 years. Among other things, it recognized Local 486 as the exclusive representative of all drivers, contained a union-security provision, and provided for monthly deduction (checkoff) of dues and initiation fees of drivers, as well as monthly payments by Respondent to the Michigan Conference of Teamsters Welfare Fund.

At the time the contract was signed, Respondent had no employees and operations in Michigan were not scheduled to begin until June 6, 1980. However, by June 5, it had established its terminal at Highland and had employed 11 drivers to operate out of that facility. On that day, all of the drivers assembled at the Highland facility, having been advised by Respondent that a meeting was to be held at the request of Local 486's business agent.

The subject of the meeting was the previously signed collective-bargaining agreement. The business agent states that he apprised the "members" of the contract and expressed his view that it contained one of the best health and welfare programs ever negotiated. He also told them that the 90-day probationary period for new drivers should be changed to 60 days, whereupon he went into an adjoining office and persuaded two representatives of Respondent to agree to that change. The "membership" then asked him about the possibility of including a cost-of-living clause. The agent again went to the office and broached that subject. He returned shortly thereafter and told the drivers that the proposal had been turned down. They accepted the rejection after representatives of management gave reasons why Respondent could not afford such a clause. Finally, it was agreed that several "typographical" changes would be made to correct errors of the business agent in drafting provisions dealing with incentive bonuses.

According to the business agent, the only reference to representation by Local 486 made during the meeting was a comment by the membership to the effect that his office in Saginaw was 80 miles away, while Teamsters Local 337 was in nearby Pontiac, to which the agent responded: "Gentlemen, if you need my services I can be here inside of an hour and a half anytime you need me."

III. ANALYSIS AND CONCLUSIONS

Respondent is shown knowingly to have recognized Local 486 as the exclusive bargaining agent of its driver employees on April 8, 1980, and well before it had hired any drivers. Although it asserts that the collective-bargaining agreement executed on that date was "conditional" and subject to review and approval by a representative complement of drivers when hired, that claim appears to be entirely unsupported. The agreement contains no indication that its effectiveness was to depend on a subsequent event. On the contrary, it was made unqualifiedly retroactive from April 1. In these circumstances the law is clear. By its premature and exclusive recognition of Local 486, Respondent confronted drivers who were later hired with a *fait accompli*, thereby interfering with guaranteed organizational rights of employees in violation of Section 8(a)(1) and gave unlawful support to a labor organization in violation of Section 8(a)(2). *International Ladies' Garment Workers' Union, AFL-CIO* v. *N.L.R.B.*, 366 U.S. 731 (1961), affg. *Bernhard-Altman, Texas Corporation*, 122 NLRB 1289 (1959).

Respondent, however, argues that any unlawfulness was rendered harmless by subsequent ratification of the agreement by 11 drivers on June 5. That circumstance, assuming it occurred, is irrelevant. Respondent's premature recognition conferred on Local 486 a deceptive cloak of authority with which it would be able persuasively to elicit employee support, and thereby negated any real possibility that a subsequent ratification would be uncoerced. Compare *Ladies' Garment Workers', supra.*[1]

In any event, ratification is an affirmative defense and, on this record, Respondent has failed to establish that a valid ratification occurred. For example, it does not appear that the drivers who assembled on June 5 were ever told that they had an option to accept or reject Local 486 as their bargaining agent. Instead, Local 486's business agent appears diligently to have kept the focus of the meeting on the merits of the health and welfare package and on his ability to deal with Respondent in the matter of *ex post facto* changes in the collective-bargaining agreement.

CONCLUSIONS OF LAW

1. By recognizing Local 486 as the exclusive bargaining representative of its employees and by executing a collective-bargaining agreement with Local 486 at a time when Respondent had no employees, and by maintaining such agreement in effect after employees were hired, Respondent has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights in violation of Section 8(a)(2) and (1) of the Act.

2. The aforesaid actions are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, I will order Respondent to withdraw all recognition from Local 486 as the representative of its employees for purposes of collective bargaining unless and until Local 486 has been duly certified by the National Labor Relations Board as the exclusive representative of such employees. I will also order Respondent to cease giving force and effect to the collective-bargaining agreement executed on April 8, 1980, or any renewal, modification, or extension thereof; provided, however, that nothing in the order shall authorize or require the withdrawal or elimination of any wage increase or other benefits, terms, and conditions of employment which may have been established pursuant to that agreement. In addition, I shall order Respondent to reimburse, with interest, all present and former employees for all initiation fees, dues, and other moneys which may have been exacted from them by, or in behalf of, Local 486. The latter requirement is a remedial rather than a punitive measure, since it serves simply to restore to Respondent's driver employees sums involuntarily withheld pursuant to the checkoff provision in a collective-bargaining agreement here shown to have been unlawfully executed and maintained. *Vernitron Electrical Components, Inc., Beau Products Division*, 221 NLRB 464 (1975), enfd. 548 F.2d 24 (1st Cir. 1977).

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[2]

The Respondent, Special Service Delivery, Inc., Highland, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Assisting or contributing support to Local 486 by recognizing or bargaining with such labor orgnization as the exclusive representative of its employees for the purpose of collective bargaining unless and until Local 486 is certified by the Board as the collective-bargaining representative of said employees pursuant to Section 9(c) of the Act.

(b) Maintaining or giving any force and effect to the collective-bargaining agreement between Respondent and Local 486 dated April 8, 1980, or any extension or modification thereof; provided, however, that nothing in this Order shall authorize or require the withdrawal or elimination of any wage increase or other benefits, terms, and conditions of employment which may have been established pursuant to the performance of said contract.

[1] Respondent cites *Coppus Engineering Corporation* v. *N.L.R.B.*, 240 F.2d 564 (1st Cir. 1957), for the proposition that hasty recognition does not necessarily indicate domination of a union by an employer. Here, however, the issue is more fundamental than a question of employer domination since Respondent had no employees at the time it accorded exclusive recognition to Local 486.

[2] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) Withholding from the pay of any of its employees union dues or other union fees or assessments which have been deducted because of any obligation of membership in Local 486, and paying to Local 486 any dues, fees, or assessments which have been deducted from the pay of its employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Withdraw and withhold all recognition from Local 486 as the collective-bargaining representative of its employees unless and until said labor organization has been duly certified by the National Labor Relations Board as the exclusive representative of such employees.

(b) Reimburse all former and present employees for all initiation fees, dues, assessments, and other moneys, if any, paid by or withheld from them in the manner provided in "The Remedy" section of this Decision.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Highland, Michigan, facility copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT assist or contribute support to Teamsters Local Union No. 486, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by recognizing or contracting with such labor organization as the bargaining representative of our employees unless and until it has been certified as such representative by the National Labor Relations Board.

WE WILL NOT give effect to our April 8, 1980, contract with Teamsters Local Union No. 486, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or to any renewal, extension, modification, or supplement thereof, but we are not authorized or required to withdraw or eliminate any wage rates or other benefits, terms, and conditions of employment which we have given to our employees under said contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Teamsters Local Union No. 486, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the collective-bargaining representative of our employees.

WE WILL reimburse all our employees, former and present, for dues and other moneys unlawfully exacted from them under the contract with Teamsters Local Union No. 486, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

SPECIAL SERVICE DELIVERY, INC.